BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2015

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P(PD)(MD)No.1425 of 2015
and
M.P.(MD)No.1 of 2015

1.Dr.C.Chandran
2.Guruji Educational Trust
rep. By its present Trustee,
No.5, 6 Vanamalai Nagar,
Bye Pass Road,
Madurai Town :Petitioners/Defendants 1 and 4

Versus

Sethuramachandran :Respondent/Plaintiff

PRAYER :Civil Revision Petition is filed under Article 227 of the Constitution of India against the Fair and Decreetal Order, dated 20.06.2014 and made in I.A.No.141 of 2014 in O.S.No.144 of 2014, on the file of the learned II Additional Subordinate Judge, Madurai.

For Revision Petitioners : Mr.G.Prabhu Rajadurai
For Respondent : Mr.M.S.Balasubramaniya Iyer

O R D E R

This Memorandum of Civil Revision is directed against the Fair and Decreetal order, dated 20.06.2014 and made in the Interlocutory Application in I.A.No.141 of 2014 on the file of the learned II Additional Subordinate Judge, Madurai.

2.The revision petitioners herein are the defendants 1 and 4, whereas the respondent is the plaintiff.

3.For the sake of convenience and for easy reference, the revision petitioners may hereinafter be referred to as the defendants 1 and 4 and the respondent herein be referred to as the plaintiff wherever the context so require.

4.The plaintiff has filed a suit in O.S.No.144 of 2012 on the file of the learned II Additional Subordinate Judge, Madurai as against four defendants of which the revisions petitioners are the defendants 1 and 4, seeking the relief of recovery of vacant possession of the I schedule property as a vacant site after removing of the offending constructions made thereon in the properties specified in the Schedule I and for redemption of the properties specified in Schedule II and also for surrendering possession together with buildings thereon, for redemption of the properties specified in Schedule III by delivering possession together with the buildings thereon and also to remove all the offending constructions made in the Schedule II and III of the plaint. The plaintiff has also sought for the relief of damage for wrongful use and occupation of the Schedule I to III and for render of accounts.

5.It appears from the records that the defendants 1 and 4 alone have contested the suit by filing their written statements. No reference is available as to whether the defendants 2 and 3 have filed their written statements.

6.In the meanwhile, the defendants 1 and 4 have filed an application in I.A.No.1047 of 2013 on 05.12.2013 under Order 14 Rule 5 and section 151 of the code of Civil Procedure for framing of an additional issue along with other issues as to "whether the suit is properly valued or not?"

7.Unfortunately, the fate of this petition is not known. Under this circumstance, the defendants 1 and 4 had taken out another application in I.A.No.141 of 2014 on 10.02.2014 under section 21(2) and section 151 of the Code of Civil Procedure to decide the pecuniary jurisdiction of the trial court.

8.This petition was contested by the plaintiff by filing his counter affidavit. After hearing both sides, the trial court has proceeded to dismiss that application on 20.06.2014.

9.Having been aggrieved by this order, the defendants 1 and 4 have approached this court with this revision, after invoking the provisions of Article 227 of the Constitution of India.

10.Heard Mr.G.Prabhu Rajadurai, learned counsel appearing for the revision petitioners and Mr.M.S.Balasubramania Iyer, learned counsel appearing for the respondent.

11.Before we go into the merits of the case, it may be better to have reference to the provisions of section 33(8) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955.

12.Sub section 8 of section 33 has been extracted as under:-

> *"8)In a suit against a mortgagee for redemption of a mortgage, fee shall be computed on the amount due on the mortgage as stated in the plaint or on one-fourth of the principal amount secured under the mortgage, whichever is higher:*
>
> *Provided that, where the amount due on the mortgage is found to be more than the amount on which fee has been paid by the plaintiff, no decree shall be passed until the deficit fee is paid:*
>
> *Provided further that, in the case of a usufructuary or anomalous mortgage, if the plaintiff prays for redemption as well as for accounts of surplus profits, fee shall be levied separately on the relief for accounts as in a suit for accounts."*

13.On a meticulous analysis of sub-section 8 of section 33 of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 for the purpose of computing the court fee in a suit against the mortgagee for redemption of a mortgage, the following two options are given to the plaintiff (mortgagor):-

(a)Fee shall be computed on the amount due on the mortgage;

or

(b)On 1/4th of the principal amount secured under the mortgage, whichever is higher.

14.The above context further explains that after discharging the mortgage amount to certain extent as stated in the plaint, fee shall be computed on the actual amount due. If no amount was paid towards discharge of the mortgage amount prior to the filing of the suit, fee shall be computed on one-fourth of the principal amount secured under the mortgage.

15.In the judgment reported in 1970 Ker,. L.T 16 in the case of P.Sambhu Namboodiri vs. Gopalan Nair and another, it has been held that:-

> *"While considering the question of "Court fee, allegations in the plaint must guide the Court. In a suit for redemption of mortgage, Court fee is payable under sub-section (8) of section 33 only on the amount due on the mortgage as stated in the plaint; the payment of the value of improvements and, taking possession of the mortgaged property together with accretions at the time of redemption, are all incidental to the main relief of redemption; all reliefs available to the plaintiff as part of redemption can be claimed and granted without payment of court fee separately; but, if other claims are based on causes of action, different from the right of redemption, court fee will have to be separately paid thereon."*

16.In an another decision reported in 1983 Ker. L.T 620(DB) in John and others vs. Lilly Lean and others, after following the Full Bench decision of our High court in Puthiyatuth Parvathi @ Kunhi Kava Amma [AIR 1951 Mad 187 (FB)], it has been held that:-

> "Under sub-section (8) of section 33, the value of a suit for redemption of a mortgage is 'the amount due on the mortgage'. *Hence, the plaintiff is* thus at liberty to pay court fee on such amount as is due when the suit is instituted, that is, *if the mortgage security is broken up by subsequent dealings or its value is diminished*, the plaintiff need to pay court fee only on the amount payable under the mortgage on the date of the suit, subject to the limit that in no case shall such an amount be less than 1/4th of the principal amount and no court fee need be paid for any ancillary relief or reliefs flowing out of the suit for redemption, like claims and counter claims to be settled between the parties *under various clauses of the mortgage deed; but the court fee would have to be paid on them as well, if they come either within the second proviso to section 33(8) or they are based on an independent cause of action."*

17.In so far as the given case on hand is concerned, as it is revealed from the averments of the plaint, the defendants had entered into a lease- deed on 07.02.2002 with the respondent/plaintiff in respect of a portion of the property specified under I Schedule and agreed to pay a sum of Rs.100/- p.m., towards the rent to the respondent/plaintiff. The period of lease was 11 years.

18.That on 6.2.2002, the defendants along with one Jansi Rani (since deceased), wife of the second defendant, had entered into a mortgage with the respondent/plaintiff in respect of a portion of the property specified under II Schedule.

19.In this mortgage deed, dated 6.2.2002, the mortgage amount was stipulated at Rs.19,00,000/-. Out of this amount, the defendants had to pay a sum of Rs.4,00,000/- in cash to the respondent/plaintiff and they would retain the remaining balance of Rs.15,00,000/-, which was to be spent for the construction of the buildings required by the defendants for the purpose of running a school by the Trust. The period of mortgage was 11 years.

20.It was also agreed that on the expiry of the 'Othi' period, the defendants would deliver the possession of the mortgaged property together with the buildings constructed thereon to the respondent/plaintiff and that the plaintiff would repay the mortgage amount of Rs.19,00,000/- to them on such delivery of possession.

21.The defendants along with the said Jansi Rani had also entered into another mortgage arrangement on the same date, i.e., on 6.2.2002 in respect of the properties specified under III Schedule. The mortgage amount was stipulated at Rs.4,00,000/-. This 'Othi' was also for a period of 11 years.

22.As afore stated, the respondent/plaintiff would be liable to pay the total mortgage amount of Rs.23,00,000/-. At the same time, as it appear from paragraph No.18 of the plaint, the respondent/plaintiff is entitled to receive the rent for the Schedule I property, at the rate of Rs.100/- p.m., with interest at the rate of 12% p.a. from the date of default in payment of the rent and the plaintiff is entitled to adjust this amount against the mortgage amount payable by them.

23.As per Table I of the plaint, the arrears of rent, payable for the Schedule I property (playground) from the month of February 2002 till November 2011 at the rate of Rs.100/- p.m. and interest at the rate of 12% p.m. from the date of default in payment of rent, (i.e., 9 Years, 9 Months and 24 Days) would be Rs.11,780/-.

24.As per Table II, the damages and compensation for the wrongful use and occupation of the Schedule I property at the rate of Rs.5,000/- per month from February 2002 till November 2011 (9 Years and 9 Months) would be Rs.5,85,500/-.

25.As per Table III, the damages and compensation for the wrongful use and occupation of the Schedule II and Schedule III properties in view of violative constructions at the rate of

Rs.10,000/- per month from the month of February 2002 till November 2011 (9 Years and 9 Months) would be Rs.11,70,000/-.

26.As per Table IV of the plaint, the damages and compensation for the wrongful use of the Terrace portion by fixing the hoardings for the period of 2 ½ years at the rate of Rs.17,000/- per month would be Rs.5,10,000/-.

27.The total amount as per Table I to IV comes to Rs.22,83,566/-.

28.As it appear from the valuation column,

a. The mortgage amount payable as per the mortgage deeds, dated 6.2.2002, would be Rs.23,00,000/- (Rs.19,00,000 + Rs.4,00,000).

b. The amount payable by the defendants as per the Table Nos.I to IV would be Rs.22,83,566/-.

c. And the balance amount payable comes to Rs.16,434/-.

29.As it appear from paragraph No.23 of the plaint, on such adjustments of the amounts mentioned in Tables I to IV, the mortgage amount payable by the plaintiff is only Rs.16,434/- and this amount is deposited into Court. Therefore, the relief sought for by the respondent/plaintiff has been valued at Rs.1,32,434/-. Accordingly, he has paid the court fee of Rs.9935.50.

30.With the above background, let us read the provisions of sub-section 8 of Section 33 of the Tamil Nadu Court Fees and Suit Valuation Act, 1955. It envisages that in a suit against a mortgagee for redemption of a mortgage, fee shall be computed on the amount due on the mortgage as stated in the plaint or on one-fourth of the principal amount secured under the mortgage, whichever is higher.

31.As per the proviso to sub-section 8 of Section 33, where the amount due on the mortgage is found to be more than the amount on which fee has been paid by the plaintiff, no decree shall be passed until the deficit court fee is paid.

32.In so far as this suit is concerned, the amount due on the mortgage is not found to be more than the amount on which fee has been paid by the plaintiff and therefore, the first proviso to sub-section 8 of Section 33 will not come into operation.

33.As envisaged under sub-section 8 of Section 33, the plaintiff has stated that the actual amount due is Rs.16,434/- and this amount appears to have been deposited before the trial Court. The plaintiff has valued the relief sought for at Rs.1,32,434/- and he has also paid the appropriate court fee of Rs.9,935.50.

34.Under these circumstances, it cannot be heard to say that the plaintiff has not properly valued the suit claim. It must be borne in mind that under sub-section 8 of Section 33, the value of the suit for redemption of a mortgage is, the amount due on the mortgage and hence, the plaintiff is at liberty to pay the Court fee on such amount when the the suit is instituted.

35.Therefore, this Court does not find any discrepancy or infirmity in the order of the Court below. Keeping in view of the above facts, this court is of considered view that this civil revision petition is devoid of any merit and is deserved to be dismissed.

Accordingly, the same is dismissed. However, there will be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To,
The II Additional Subordinate Judge,
Madurai.

+1cc to M/s.M.S.Balasubramaniya Iyer, Advocate in SR.68712

C.R.P(PD)(MD)No.1425 of 2015
02.12.2015

er/rbn
PBK/PM-MP/SAR-II 06/01/2016 ::6P-3C::